

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

SUSAN WILLETT,

05-CV-596-BR

Plaintiff,

OPINION AND ORDER

v.

JOANNE B. BARNHART, Commissioner,
Social Security Administration,

Defendant.

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BROWN, Judge.

Plaintiff Susan Willett seeks judicial review of a final decision of the Commissioner of the Social Security Administration (SSA) in which she denied Plaintiff's applications for disability insurance benefits (DIB) under Title II of the Social Security Act and Supplemental Security Income disability benefits (SSI) under Title XVI of the Social Security Act.

This Court has jurisdiction to review the Commissioner's decision pursuant to 42 U.S.C. § 405(g). Following a thorough and careful review of the record, the Court **AFFIRMS** the decision of the Commissioner and **DISMISSES** this matter.

ADMINISTRATIVE HISTORY

Plaintiff filed her applications for SSI and DIB on April 13, 1996, and alleged a disability onset date of April 15, 1995. The SSA employee who assisted Plaintiff with her application determined Plaintiff's work activity after April 15,

1990, was not substantial gainful activity, and, therefore, an onset date of April 15, 1990, was appropriate. The applications were denied initially and on reconsideration. An Administrative Law Judge (ALJ) held a hearing on September 14, 1998. At the hearing, Plaintiff was represented by an attorney. Plaintiff, two lay witnesses, and a vocational expert (VE) testified.

The ALJ issued a decision on December 22, 1998, in which he found Plaintiff was not entitled to benefits. That decision became the final decision of the Commissioner on June 15, 2000, when the Appeals Council denied Plaintiff's request for review.

On August 11, 2000, Plaintiff filed a Complaint in this Court in which she sought judicial review of the Commissioner's decision. On April 16, 2001, the Commissioner filed an unopposed Motion to Remand this matter for further proceedings before the ALJ. On April 18, the Court remanded this matter to the Commissioner for further administrative proceedings.

On November 29, 2004, an ALJ held a hearing after remand at which Plaintiff, a lay witness, a medical expert, and a VE testified. The ALJ issued a decision on February 16, 2005, in which he found Plaintiff was not entitled to benefits. That decision became the final decision of the Commissioner when the Appeals Council denied Plaintiff's request for review.

BACKGROUND

Plaintiff was born on May 20, 1959, and was 45 years old at the time of the second hearing. Tr. 45, 246.¹ She completed high-school. Tr. 13. Plaintiff has past relevant work experience as a bookkeeper and accounts-receivable clerk. Tr. 13.

Plaintiff alleges disability due to fibromyalgia, digestive problems, cognitive problems, and lupus. Tr. 12, 246-49.

The ALJ acknowledged Plaintiff has the severe impairments of fibromyalgia, fatigue, depression, headaches, lupus/discoid type, occasional panic attacks, adjustment disorder with mixes of anxiety and depressed mood, irritable bowel syndrome, and methamphetamine and alcohol abuse (in remission per Plaintiff), but the ALJ denied benefits on the ground that Plaintiff retains the residual functional capacity (RFC) to perform a modified range of light exertion work at jobs that exist in a significant number in the national economy such as small-products assembler, packaging/filling operator, and cashier.

Except when noted below, Plaintiff does not challenge the ALJ's summary of the medical evidence. Plaintiff, however, contends the ALJ erred when he (1) improperly rejected

¹ Citations to the official transcript of record filed with the Commissioner's Answer on November 22, 2004, are referred to as "Tr."

Plaintiff's testimony; (2) improperly rejected the testimony of three lay witnesses; (3) improperly rejected the opinion of C.F. Kenyon, M.D., treating physician; (4) improperly evaluated Plaintiff's RFC; and (5) posed an incomplete hypothetical to the VE.

After carefully reviewing the medical records, this Court adopts the ALJ's summary of the medical evidence. See Tr. 17-18.

STANDARDS

The initial burden of proof rests on the claimant to establish disability. *Roberts v. Shalala*, 66 F.3d 179, 182 (9th Cir. 1995), *cert. denied*, 517 U.S. 1122 (1996). To meet this burden, a claimant must demonstrate the inability "to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which . . . has lasted or can be expected to last for a continuous period of not less than 12 months." 42 U.S.C. § 423(d)(1)(A). The Commissioner bears the burden of developing the record. *DeLorme v. Sullivan*, 924 F.2d 841, 849 (9th Cir. 1991).

The district court must affirm the Commissioner's decision if it is based on proper legal standards and the findings are supported by substantial evidence in the record as a whole. 42 U.S.C. § 405(g). "Substantial evidence means more than a mere scintilla but less than a preponderance; it is such relevant

evidence as a reasonable mind might accept as adequate to support a conclusion." *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995).

The court must weigh all of the evidence whether it supports or detracts from the Commissioner's decision. *Martinez v. Heckler*, 807 F.2d 771, 772 (9th Cir. 1986). The Commissioner's decision must be upheld, however, even if the "evidence is susceptible to more than one rational interpretation." *Andrews*, 53 F.3d at 1039-40.

DISABILITY ANALYSIS

The Commissioner has developed a five-step sequential process for determining whether a claimant is disabled within the meaning of the Act. *Bowen v. Yuckert*, 482 U.S. 137, 140 (1987). See also 20 C.F.R. §§ 404.1520, 416.920. There is no dispute in this case regarding the first three steps.

For purposes of Step Four, the Commissioner must determine whether the claimant retains the residual functional capacity (RFC) to perform work he has done in the past. *Yuckert*, 482 U.S. at 141-42. See also 20 C.F.R. §§ 404.1560(a)(3), 416.920(e). The claimant's RFC is an assessment of the sustained, work-related activities the claimant still can do on a regular and continuing basis despite the limitations imposed by his impairments. 20 C.F.R. §§ 404.1545(a), 416.945(a). See also

Social Security Ruling (SSR) 96-8p.

If the Commissioner reaches Step Five, she must determine whether the claimant is able to do any other work that exists in the national economy. *Yuckert*, 482 U.S. at 141-42. See also 20 C.F.R. §§ 404.1520(e),(f), 416.920(e),(f). Here the burden shifts to the Commissioner to show a significant number of jobs exist in the national economy that the claimant can do. *Yuckert*, 482 U.S. at 141-42. See also *Tackett v. Apfel*, 180 F.3d 1094, 1098 (9th Cir. 1999). If the Commissioner meets this burden, the claimant is not disabled. 20 C.F.R. §§ 404.1566, 416.920(f)(1).

DISCUSSION

As noted, Plaintiff contends the ALJ erred when he (1) improperly rejected Plaintiff's testimony; (2) improperly rejected the testimony of three lay witnesses; (3) improperly rejected the opinion of C.F. Kenyon, M.D., treating physician; (4) improperly evaluated Plaintiff's RFC; and (5) posed an incomplete hypothetical to the VE.

I. Properly Rejected Plaintiff's Testimony.

Plaintiff alleges the ALJ erred when he failed to give clear and convincing reasons for rejecting Plaintiff's testimony.

"If the ALJ finds that the claimant's testimony as to the severity of [the claimant's] pain and impairments is unreliable, the ALJ must make a credibility determination with findings

sufficiently specific to permit the court to conclude the ALJ did not arbitrarily discredit claimant's testimony." *Thomas v. Barnhart*, 278 F.3d 947, 958 (9th Cir. 2002). When weighing the claimant's credibility, the ALJ may consider "inconsistencies either in his testimony or between his testimony and his conduct, his daily activities, his work record, and testimony from physicians and third parties concerning the nature, severity, and effect of the symptoms of which he complains." *Light v. Soc. Sec. Admin.*, 119 F.3d 789, 792 (9th Cir. 1997). "If the ALJ's credibility finding is supported by substantial evidence in the record, we may not engage in second-guessing." *Thomas*, 278 F.3d at 958.

The ALJ identified inconsistencies between Plaintiff's testimony and the medical record and, as a result, found Plaintiff's testimony regarding her ability to work was not credible. Tr. 20-21.

For example, the ALJ noted at the hearing that Plaintiff testified she is unable to work due to panic attacks, depression, headaches, fatigue, sleep problems, irritable bowel syndrome, and pain. As far back as December 6, 1990, however, John B. Chester, M.D., treating orthopedic surgeon, questioned whether

[Plaintiff has] other conditions which have led to symptom migration and amplification over time. In my view, it is more probable that Plaintiff has become involved in a conversion process (hysteria) than it is likely that she actually has something such as multiple sclerosis . . . which might lead

to spreading and unusual patterns of symptoms.

Tr. 396. Dr. Chester opined:

[I]t is in all parties best interest to bring medical investigations to a close at this time [T]he persisting symptoms, the multiple physicians involved, and the underlying psychodynamics are all creating a progressively involved illness in this person far and beyond what might have occurred with a simple strain syndrome.

Tr. 396.

In addition, Bill L. Hennings, Ph.D., examining psychologist opined Plaintiff "may feel that she does not get enough consideration from her family and may engage in some passive-aggressive manipulation." Tr. 380-81.

In connection with Plaintiff's Worker's Compensation claim relating to her stress condition, Arlen Quan, Ph.D, P.C., examining psychiatrist noted his "treatment of choice" for Plaintiff would be psychiatric, but Plaintiff "is quite upset at anything that might be psychological or psychiatric." Tr. 401. Dr. Quan reported, "There are very obvious secondary gain possibilities including chiropractic care, attention from parents and others important to her At this time[, however] her likelihood to participate in psychiatric treatment is minimal." Tr. 403.

The ALJ also noted the record is replete with references to Plaintiff's extensive use of narcotics, their effects, and Plaintiff's refusal to consider other methods of treatment.

For example, between October 1994 and April 1995, Plaintiff increased her intake of Percodan from three per day to six per day. Tr. 567, 573. On April 4, 1995, Dr. Kenyon noted Plaintiff wished to increase her pain medication beyond six Percodans per day. Dr. Kenyon reported, "I could not prescribe more than six Percodans daily or more than one Xanax daily. [Plaintiff] was very resistant to my firmness. I really feel we need to stop at this level." Tr. 567. On April 10, 1995, Dr. Kenyon noted Plaintiff "really wants more pain medication and wants me to prescribe oxytocin." Tr. 567. On April 14, 1995, Dr. Kenyon had a 40-minute telephone discussion with Plaintiff "concerning the need to decrease her medication." Tr. 567. On April 25, 1995, Dr. Kenyon told Plaintiff that her Percodan prescription "must last two weeks," and he would not refill it any earlier. Tr. 566. On May 8, 1995, Dr. Kenyon "strong[ly] recommend[ed] that [Plaintiff] be checked into a drug rehab unit as a patient to treat her drug abuse." Tr. 566. Dr. Kenyon noted Plaintiff "recognizes that she has a drug abuse problem . . . , however, [he] agreed to place her on MS Contin." Plaintiff "agreed to slowly decrease the Xanax and not to take any Percodan tabs." Tr. 566. On May 10, 1995, Dr. Kenyon reported Plaintiff was "upset at [him]." Tr. 561. Plaintiff wanted "more Percocets than six/day." Tr. 561. Dr. Kenyon had a 40-minute discussion with Plaintiff "concerning her drug abuse" and again recommended

a drug rehabilitation center." Tr. 561.

On September 5, 1995, Plaintiff fractured her toe, increased her pain medication, and took her entire daily dose of pain medication by noon. Tr. 560. On September 14, 1995, Dr. Kenyon advised Plaintiff she was using "more MS Contin than was indicated. #100 should be lasting 3 weeks it seems." Tr. 558. On October 28, 1995, Dr. Kenyon notes he had a "counseling/discussion [with Plaintiff] concerning morphine/Librium use." Tr. 552. On October 30, 1995, Dr. Kenyon noted Plaintiff "in no way wants any kind of inpatient pain program where she would immediately be taken off her medication She feels that she can decrease her MS Contin to a reasonable level." Tr. 552.

On November 9, 1995, Peter Kosek, M.D., examined Plaintiff on referral to the Oregon Health Sciences University Pain Clinic. Dr. Kosek noted Plaintiff admitted to "daily use of methamphetamines." Tr. 447. Dr. Kenyon reported Plaintiff "is taking prescription medication and is at high abuse potential. She also used methamphetamines as recently as this morning." Tr. 448. Dr. Kosek opined, "It suggests the patient is probably dependent and/or addicted to prescription medications and illegal substances. . . . [I]t presents a very worrisome picture of a complex substance abuse [sic]." Tr. 448. Dr. Kosek further noted Plaintiff "has been taking MS Contin on a prn basis, which

contradicts the pharmacokinetics of this particular medication, which is designed to be a slow release morphine." Tr. 448.

Dr. Kosek stated, "General use of opioids for benign pain is controversial at best, and I would not recommend continuing the patient on chronic morphine therapy." Tr. 448. Finally, Dr. Kosek noted Plaintiff "has been taking benzodiazepines [Librium] for quite some time to manage an anxiety disorder. However, they certainly would not be indicated for chronic pain state management." Tr. 448.

Dr. Kosek informed Dr. Kenyon of Plaintiff's reported methamphetamine use. On November 15, 1995, Dr. Kenyon reported, "A physician at OHSU called and indicated [Plaintiff] has been taking crank. I called the patient and confronted her with this fact and she did admit to using crank on several occasions . . . and indicated an addiction." Tr. 548. Dr. Kenyon again recommended a drug-treatment program. Plaintiff, however, "insist[ed] she is not addicted to anything and that she ha[d] no intentions of using crank again We could maintain her MS Contin 30 mg tid [sic] on a long term basis. No more than that however." Tr. 548.

On May 9, 1996, Dr. Kenyon "once again . . . approached [Plaintiff] with the fact that depression is a problem. The medications are certainly contributing to this and once again this was discussed She feels . . . her medication is

untouchable. She just wants to feel better" Tr. 533.

On May 28, 1996, Jackie Kern, M.S.W., L.C.S., saw Plaintiff for marital counseling. During the session, Plaintiff "denie[d] over use [of drugs], but admitted others have been concerned that she abuses pain meds and recreational drugs." Tr. 478.

On July 20, 1996, Keith Cunningham, M.D., examined Plaintiff. Plaintiff admitted she "had been taking intravenous amphetamines [Plaintiff] did not wish to expound or provide further detail on her intravenous drug use in regard to her chronic pain syndrome or which came first." Tr. 495. Dr. Cunningham diagnosed Plaintiff with "chronic pain syndrome with no evidence of musculoskeletal or neurological abnormality," depression, or anxiety. Tr. 498. Dr. Cunningham also noted Plaintiff's "[s]ubjective complaints far outweigh objective findings by today's exam." Tr. 498. Dr. Cunningham noted after Plaintiff's exam, she "was found in the next door exam room taking notes and 'obtaining her own dictation notes.' [Plaintiff] was later escorted out into the waiting area." Tr. 498.

On September 25, 1996, Dr. Kenyon met with Plaintiff's divorce attorney and reported:

I was right up front with Mr. Brand and indicated that her present use of MS-Contin were [sic] definitely depressing her mental status to a significant degree. Her ability to take care of her children and other responsibilities would certainly be impaired at the present level of medication. . . . I indicated that a rehab program . . . was indicated She has

always held steadfast to the idea that she could get off of any medication if it was absolutely needed. During that period of time since November [1995] her MS-Contin and Librium dosage was escalated through various manipulations on her part. Presently she need to have her medications at the following level: MS-Contin 30 mg, Librium 10 mg. She most likely could function in a proper manner if her medicines were at that level.

Tr. 544.

Although Dr. Kenyon reported Plaintiff "continues to decrease her MS Contin and Librium," he noted Plaintiff was "taking 100 mg daily of MS Contin" in October, 1996. Tr. 544.

On December 14, 1996, Kelly D. Krohn, M.D., F.A.C.R., examined Plaintiff and opined Plaintiff's "use of narcotics was out of proportion to her physical exam which was basically unremarkable other than fibromyalgia tender points." Tr. 536. Dr. Krohn also reported Plaintiff's narcotic use had "accelerated to an unacceptable level." Tr. 536. In addition, Dr. Krohn noted "[Plaintiff] has a substantial history of depression. . . . [S]he is very adamant that she does not want to be seen by a psychologist or psychiatrist at this time." Tr. 534.

On August 25, 1998, Dr. Kenyon reported the MS Contin Plaintiff takes "causes drowsiness/lack of focus and the Flexeril also causes drowsiness and lack of focus Therefore, under these conditions, I cannot see her working at any job for any number of useful hours." Tr. 731. On September 2, 1998, Dr. Kenyon opined Plaintiff's headaches were "possibly: rebound

headaches from MS Contin usage." Tr. 692. On September 26, 2002, Dr. Kenyon contacted Safeway pharmacy, and they informed him that they "double back count medications, particularly narcotics before dispensing them and it is highly unlikely that they would have four counts that are so off so significantly as [Plaintiff] identifies. [Plaintiff] indicates that she had been off as much as 14 pills at a time." Tr. 218.

On October 9, 2002, Merlynn Peasley, N.P., noted Plaintiff's mother called Dr. Kenyon's office to report that Plaintiff was experiencing "'withdrawal from oxycontin' due to running out of meds early." Tr. 217. Nurse Peasley reported Plaintiff "believes the pharmacy continues to short her every month for the past 4 mnths [sic]," and Plaintiff "is furious that early refills are denied." Tr. 217. Nurse Peasley informed Plaintiff's mother that "they explained policy of no early refills on 9/13 visit." Tr. 217.

On October 17, 2002, a physician at the West Hills Medical Center treated Plaintiff and noted:

The most significant problem, once again, appears to be patient's home situation Her family apparently is convinced that all of her symptoms are fibromyalgia in origin. She is now having all of her MS contin bubble-wrapped by the pharmacy so that she and them [sic] may double-check the count on them so that there is no dispute with her for early refills. Indicates Dr. Kenyon previously gave her MS Contin every month "I am unwilling to continue that I have counseled her strongly on regaining control of her life through changes in her lifestyle and personal management

rather than medication management. Will not start her on any new medications at this time. I have insisted that if we are continue [sic] to refill her pain medication that she and I both must sign a pain contract that assures her that I will refill her pain medication when it is due and that assures me that she will not be asking for early refills.

Tr. 216.

The ALJ found Plaintiff to be credible generally "to the extent she does have medically determinable impairments that do cause vocationally relevant limitations." Tr. 15. The ALJ, however, noted Plaintiff's inconsistent information on her use of narcotics, refusal to participate in psychiatric or psychological methods of treatment, and refusal to follow through with other methods of managing her pain. The ALJ also found Plaintiff's statements regarding "the intensity, persistence and limiting effects of these symptoms are disproportionate and not supported by the medical record." Tr. 16.

On this record, the Court finds the ALJ adequately explained his reasons for finding Plaintiff not credible as to the intensity, persistence, and limiting effects of her conditions. The Court, therefore, concludes the ALJ did not err because he provided a legally sufficient basis supported by the record for rejecting portions of Plaintiff's testimony.

II. The ALJ Properly Rejected the Testimony of Lay Witnesses.

Plaintiff contends the ALJ improperly rejected the testimony of Gary Field, her boyfriend; the witness statement of Patsy

Trivelpiece, Plaintiff's mother; and the witness statement of Christina Kindel, Plaintiff's daughter, all of whom testified Plaintiff had marked limitations in activities of daily living due to fatigue and pain.

To reject lay-witness testimony, the ALJ must give reasons that are germane to the witness. *Nguyen v. Chater*, 100 F.3d 1462, 1467 (9th Cir. 1996). See also *Regennitter v. Comm'r*, 166 F.3d 1294, 1298 (9th Cir. 1999).

The ALJ considered the lay-witness statements and testimony, but he did not fully credit the witnesses' assessments regarding the extent of Plaintiff's pain and fatigue because "none of the witnesses are trained to critically evaluate whether the claimants complaints are exaggerated or inconsistent with the medical evidence." Tr. 16. In addition, the record contains reference to the likelihood that Plaintiff "may engage in some passive-aggressive manipulation" with her family because "she does not get enough consideration" from them. Tr. 380-81. Finally, as noted, the ALJ properly found Plaintiff not credible with respect to the degree and level of her pain and fatigue related to fibromyalgia. The ALJ, therefore, found the assessments by Plaintiff's family, which necessarily rely on Plaintiff's presentation of fatigue and pain, were not reliable.

Accordingly, the Court concludes the ALJ did not err when he found the testimony and statements of these lay witnesses not

credible because he gave reasons germane to the lay witnesses and provided a legally sufficient basis supported by the record for doing so.

III. The ALJ Properly Rejected the Opinion of Dr. Kenyon.

It is well-settled that "greater weight is afforded to the opinion of a treating physician than to that of [a] non-treating physician, because the treating physician is employed to cure and has a greater opportunity to know and observe the patient as an individual." *Ramirez v. Shalala*, 8 F.3d 1449, 1453 (9th Cir. 1993)(internal quotations omitted). A treating physician's opinion is controlling when it is "well-supported by medically acceptable clinical and laboratory diagnostic techniques and is not inconsistent" with other evidence of record. 20 C.F.R. § 404.1527(d)(2).

When a treating physician's opinion is not entitled to controlling weight, the ALJ must give "specific, legitimate reasons" for rejecting it if that opinion conflicts with another physician's opinion or with evidence in the record. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989). When the opinion of the treating physician or other medical expert is uncontroverted, the ALJ must give "clear and convincing reasons" before rejecting such an opinion. *Id.* See also *Lester v. Chater*, 81 F.3d 821, 830-32 (9th Cir. 1995). The ALJ also must give "specific, legitimate reasons" for rejecting the opinion of an examining

physician when that opinion conflicts with another physician's opinion or with evidence in the record. *Magallanes v. Bowen*, 881 F.2d 747, 751 (9th Cir. 1989).

On June 11, 1996, Dr. Kenyon opined Plaintiff was capable of sedentary work, but she could not work full time. Tr 546. On May 26, 1996, Dr. Kenyon opined Plaintiff could not do any "work related activities" and noted he had "never had a patient become so incapable of performing her duties as a wife & a mother as a result of the fibromyalgia disease & its treatment. She is unable to handle any job responsibilities under the present circumstances." Tr. 545. Although her lab tests were normal, Dr. Kenyon noted when he last saw her on December 22, 1997, that Plaintiff suffered from fatigue, depression, headaches, and fibromyalgia when he last saw her on April 27, 1997. Tr. 511. Dr. Kenyon opined Plaintiff was incapable of performing even a low-stress job because she had not been able to perform a low-stress job in the past. Tr. 511. Dr. Kenyon also reported Plaintiff could walk one block without rest; sit or stand 30 minutes at a time; and limit standing, walking, and sitting to two hours. Tr. 512.

The ALJ did not fully adopt Dr. Kenyon's reported limitations as to Plaintiff's inability to do any kind of work. The ALJ pointed out that Dr. Kenyon relied "quite heavily" on Plaintiff's subjective reports of symptoms. In fact, as noted,

Dr. Kenyon reported all of Plaintiff's lab tests had been normal. Tr. 17. This Court has found, the ALJ provided sufficient reasons for finding Plaintiff's testimony regarding the extent of her pain and fatigue to be not credible. Accordingly, the Court concludes the ALJ did not err when he rejected those findings of Dr. Kenyon that relied on Plaintiff's assertions of pain and fatigue.

Dr. Kenyon's opinion also is contradicted by the opinions of other treating and examining physicians. On September 27, 1996, David Sweet, Ph.D., reported the "level of depression and anxiety that [Plaintiff] is experiencing are not significant enough to prevent her from working competitively." Tr. 501. On July 20, 1997, Dr. Cunningham could noted only two trigger points (out of a possible 18) for fibromyalgia and did not find any evidence of "joint abnormalities, . . . symmetrical abnormalities, or bony abnormalities." Tr. 498. On December 14, 1996, Dr. Krohn reported Plaintiff's "physical exam . . . was basically unremarkable other than fibromyalgia tender points." Tr. 536. In addition, Dr. Kosak noted the use of MS Contin prn basis as prescribed by Dr. Kenyon "contradicts the pharmacokinetics of [that] particular medication." Tr. 448. Dr. Kosak noted he would not recommend continuing Plaintiff on "chronic morphine therapy." Tr. 448.

Finally, the record indicates Plaintiff was not fully

forthcoming with Dr. Kenyon a number of times about her use of methamphetamines, her continued use of high levels of MS Contin and Librium, and her total refusal to attempt other methods of treatment.

On this record, therefore, the Court concludes the ALJ did not err when he rejected Dr. Kenyon's opinion because the ALJ provided legally sufficient reasons supported by the record for doing so.

IV. The ALJ's RFC Assessment and Step-Five Conclusions.

Plaintiff contends the ALJ erred by omitting from his RFC assessment and his hypothetical to the VE the extent of Plaintiff's limitations of fatigue and pain identified by Dr. Kenyon, Plaintiff, and the lay witnesses. As noted, however, the Court has found the ALJ did not err when he discounted Dr. Kenyon's opinion, Plaintiff's testimony, and the testimony and statements of the lay witnesses because the ALJ provided legally sufficient reasons supported by the record for doing so.

Accordingly, the Court concludes the ALJ did not err in his RFC assessment of Plaintiff nor in his hypothetical to the VE, both of which included consideration of Plaintiff's relevant and credible limitations.

CONCLUSION

For these reasons, the Court **AFFIRMS** the decision of the

Commissioner and **DISMISSES** this matter.

IT IS SO ORDERED.

DATED this 30th day of March, 2006.

/s/ Anna J. Brown

ANNA J. BROWN
United States District Judge